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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

LAURA VANCE,

Plaintiff,

vs.

MARK T. CASE, and JANE DOE  
CASE, husband and wife; SUTTELL &  
HAMMER, P.S., SUTTELL &  
ASSOCIATES, P.S., CAITLIN R.  
FINLEY and JOHN DOE FINLEY,  
wife and husband, and MALISA L.  
GURULE and JOHN DOE GURULE,  
wife and husband,

Defendants.

Case No.: CV-10-036-LRS

MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

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I. Introduction

In August 2008, Plaintiff Laura Vance paid in full (by cashier's check) a Judgment entered on June 13, 2008 against her in favor of HSBC. Ms. Vance contacted the Suttell office several times, to obtain the payment amount, directions on the proper address and procedure for making the payment, and then to inform them the payment was mailed. Plaintiff Vance and her husband followed the instructions of the Defendants in this case. In addition, Plaintiff Vance and her husband sent a copy of the Writ of Garnishment that had been served on her former employer. The Defendants are all "debt collectors" as defined by federal law regulating their conduct acting as attorneys for HSBC.

Despite the full payment of the Judgment, the Defendants repeatedly continued to attempt to collect the Judgment that had been fully paid. Plaintiff Vance and her husband repeatedly informed the Defendants that the Judgment had been paid.

In June 2008, Defendants obtained a Writ of garnishment against Ms. Vance's former employer (Ms. Vance had changed jobs before the writ was issued). After the Judgment was fully paid, the Defendants failed to quash the garnishment forcing Ms. Vance's former employer to answer the writ in October 2008. The Vance's received a copy of that employer's answer and again contacted Suttell, P.S. to remind them the Judgment had been paid. The Vance's were

1 attempting to refinance their house, and the Judgment (without showing  
2 satisfaction) appeared on their credit report. The lender contacted Suttell, P.S. with  
3 the information that the Vance's said the Judgment had been paid.  
4

5 In December 2008, the Judgment was still showing as unpaid on the Vance's  
6 credit report so they again contacted Suttell, P.S. to inform them the Judgment had  
7 been paid. The Vance's spoke to several Suttell, P.S. employees including  
8 eventually attorney Mark Case. They informed Mr. Case the name of the case, the  
9 number of the case, the name of the Defendant (Laura Vance), and that the  
10 Judgment had been paid and then faxed a copy of the cashier's check showing full  
11 payment to the Suttell, P.S. fax phone number as requested by Mr. Case.  
12  
13

14 The Defendants then filed three (3) supplemental proceedings against the  
15 Plaintiff (in this case) Laura Vance obtaining court orders requiring the Plaintiff to  
16 appear in Spokane County Superior Court to identify all of her assets under penalty  
17 of contempt of court. On one occasion, the Plaintiff and her husband met with Mr.  
18 Case (at the courthouse), identified Ms. Vance as the former judgment debtor (that  
19 Mr. Case had summoned for the supplemental proceedings), and reminded him of  
20 their earlier conversation and reminded him the Judgment had been fully paid.  
21  
22 Nonetheless, Suttell, P.S. obtained another court order requiring Plaintiff Vance (in  
23 this suit) to appear before the judge in state court for supplemental collection  
24 proceedings. Plaintiff Vance repeatedly informed several different Suttell, P.S.  
25

1 employees that she had paid the Judgment in full. She even met in person with  
2 Suttell, P.S. attorney, Defendant Mark Case to remind him she had paid the  
3 Judgment in full. She provided Mr. Case with a copy of the cashier's check with  
4 which she had paid the Judgment.  
5

6 But Defendants failed and/or refused to file a Satisfaction of Judgment.  
7 Defendants failed and/or refused to quash the garnishment Defendants had  
8 instituted against Plaintiff Laura Vance, attempting to garnish her wages from her  
9 former employer. Defendants repeatedly signed sworn false statements under oath  
10 that the debt remained due and owing (after it had been fully paid many months  
11 before) which Defendants filed with the Spokane County Superior Court in order  
12 to obtain a Court Order directing Plaintiff Vance to appear for Supplemental  
13 Proceedings at the Spokane County Courthouse three (3) times under threat of  
14 contempt of court.  
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17

18 The Defendants violated the Fair Debt Collection Practices Act by making  
19 misrepresentations and engaging in unfair practices regulated and prohibited by the  
20 statute. Defendants Mark T. Case, Suttell & Hammer, P.S., Caitlin Finley and  
21 Malisa Gurule each violated 15 USC 1692e<sup>1</sup> (misrepresentations), including but  
22

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23  
24  
25 <sup>1</sup> "A debt collector may not use any false, deceptive, or misleading representation  
or means in connection with the collection of any debt. Without limiting the

1 not limited to 1692e(2)(A)<sup>2</sup>, and § 1692e(5).<sup>3</sup> The Defendants also each violated  
 2 15 USC 1692f (unfair practices), including but not limited to 1692f(1)<sup>4</sup> by using  
 3 “unfair or unconscionable means to collect or attempt to collect any debt”,  
 4 including by attempting to collect a Judgment that had been paid in full.  
 5

6 The FDCPA prohibits debt collectors “from making false or misleading  
 7 representations and from engaging in various abusive and unfair practices.” *Heintz*  
 8 *v. Jenkins*, 514 U.S. 291, 292, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995); *see, e.g.*, §  
 9 1692e(10) (prohibiting “[t]he use of any false representation or deceptive means to  
 10 collect or attempt to collect any debt”); § 1692f (prohibiting the use of any “unfair  
 11 or unconscionable means to collect or attempt to collect any debt”). “[T]he purpose  
 12  
 13

14 general application of the foregoing, the following conduct is a violation of this  
 15 section:” [sets forth specified violations].  
 16

17 <sup>2</sup> “The false representation of-- (A) the character, amount, or legal status of any  
 18 debt”. 15 USC 1692e (2)(A).

19 <sup>3</sup> “The threat to take any action that cannot legally be taken or that is not intended  
 20 to be taken.” 15 USC 1692e(5).

21 <sup>4</sup> “A debt collector may not use unfair or unconscionable means to collect or  
 22 attempt to collect any debt. Without limiting the general application of the  
 23 foregoing, the following conduct is a violation of this section: (1) The collection of  
 24 any amount (including any interest, fee, charge, or expense incidental to the  
 25 principal obligation) unless such amount is expressly authorized by the agreement  
 creating the debt or permitted by law”. 15 USC 1692f(1).

1 of the FDCPA is to protect consumers broadly from improper practices and the  
 2 statute is to be interpreted liberally for this purpose.” *Riley v. Giguere*, 631  
 3 F.Supp.2d 1295, 1305 (E.D.Cal.2009) (citing *Clark v. Capital Credit & Collection*  
 4 *Servs., Inc.*, 460 F.3d 1162, 1171, 1175 (9th Cir.2006)).

6 The FDCPA is a strict liability statute that “makes debt collectors liable for  
 7 violations [even if ] the violations are not knowing or intentional.” *Donohue v.*  
 8 *Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir.2010) (quoting *Recihert v. Nat'l*  
 9 *Credit Sys., Inc.*, 531 F.3d 1002, 1005 (9th Cir.2008)) (internal quotation marks  
 10 omitted).

## 13 II. Facts

14 On June 13, 2008, the Defendants obtained a Default Judgment in the  
 15 amount of \$3,610.57, in favor of HSBC Bank Nevada, N.A. (“HSBC”) against  
 16 Plaintiff Laura Vance. (Pl.’s Fact No. 20). On July 16, 2008, one of the Suttell  
 17 attorneys<sup>5</sup> obtained a Writ of Garnishment against Spokane Advance Imaging  
 18

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20 <sup>5</sup> The “declaration” for garnishment was not signed. The writ should not have been  
 21 issued since : “The judgment creditor as the plaintiff or someone in the judgment  
 22 creditor's behalf shall **apply for a writ of garnishment by affidavit, stating** the  
 23 following facts: (1) The plaintiff has a judgment wholly or partially unsatisfied in  
 24 the court from which the writ is sought; (2) the amount alleged to be due under that  
 25 judgment; **(3) the plaintiff has reason to believe, and does believe that the**

1 Institute, but Laura Vance no longer was employed there<sup>6</sup>. In late July of 2008,  
 2 Plaintiff Laura Vance received notice that the Defendants had garnished her former  
 3 employer. (Pl.'s Fact No. 22).  
 4

5 On August 4, 2008, in response to the notice of garnishment, the Plaintiff  
 6 and her husband, Michael Vance, contacted the employees at Suttell, P.S. to  
 7 arrange payment of the Judgment to avoid further garnishment. The Suttell, P.S.  
 8 employees instructed the Vances regarding payment instructions, including  
 9 directing the Vance's to send a certified check and confirmation of the amount  
 10 owed for a payoff, and providing the address where Suttell, P.S. directed the  
 11 payment be made. (Pl.'s Fact No. 23-25). Plaintiff Laura Vance and her husband  
 12 followed these instructions precisely. On August 5, 2008, the very next day,  
 13 Plaintiff Laura Vance contacted Suttell, P.S. and informed them it would take 7-10  
 14 business days for the paperwork to be processed for her husband Michael Vance to  
 15  
 16  
 17

18 **garnishee, stating the garnishee's name and residence or place of business, is**  
 19 **indebted to the defendant** in amounts exceeding those exempted from  
 20 garnishment by any state or federal law, or that the garnishee has possession or  
 21 control of personal property or effects belonging to the defendant which are not  
 22 exempted from garnishment by any state or federal law; and (4) whether or not the  
 23 garnishee is the employer of the judgment debtor.  
 24

25 Wash. Rev. Code Ann. § 6.27.060 .

<sup>6</sup> See above.

1 cash out his pension. (Pl.'s Fact No. 27). On August 14, 2008, Plaintiff again  
2 contacted Suttell, P.S. and informed them she would have the funds to pay the  
3 Judgment in full the next day. (Pl.'s Fact No. 28)  
4

5 On August 20, 2008, Plaintiff's husband Michael Vance contacted Suttell,  
6 P.S. and informed them he was sending a cashier's check that day for the full  
7 amount of the Laura Vance Judgment. (Pl.'s Fact No. 29). On August 20, 2008,  
8 Plaintiff's husband Michael Vance cashed out his entire pension and obtained a  
9 cashier's check payable to Suttell, P.S. in the amount of \$3,610.57, the exact  
10 amount of the Laura Vance Judgment. (Pl.'s Fact No. 30). The cashier's check was  
11 labeled "GARNISHMENT PAYOFF." (Pl.'s Fact No. 32). The same day, the  
12 Vances mailed the check to Suttell, P.S. with a copy of the Writ of Garnishment.  
13 (Pl.'s Fact No. 33). The envelope listed the Vance's return address. (Pl.'s Fact No.  
14 34).  
15  
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18 On or about August 25, 2008, Suttell, P.S. received the cashier's check.  
19 (Pl.'s Fact No. 35). Sharon Hunter, an employee of Suttell, P.S., received the  
20 cashier's check and sent Karen Hammer (a Suttell, P.S. principle attorney), a one  
21 (1) sentence email requesting permission to apply the check to the account of  
22 "Michael G. Vance." (Pl.'s Fact No. 36). Michael G. Vance was not garnished, did  
23 not have a Judgment entered against him, had a different address, and was recently  
24 dunned for a lesser amount. (Pl.'s Fact No. 37). Karen Hammer replied, "Yes  
25



1 apply as SIF – thanks!” (Pl.’s Fact No. 38). Suttell, P.S. did not satisfy the  
2 Judgment against the Plaintiff and did not release the garnishment. (Pl.’s Fact No.  
3 41). On August 26, 2008, the cashier’s check was deposited in a Suttell, P.S.  
4 account identified as “Midland YGC.” (Pl.’s Fact No. 39-40). “Midland YGC” is  
5 not a trust account. (Pl.’s Fact No. 40).  
6

7 Sometime in September of 2008, Plaintiff received a copy of her employer’s  
8 second Answer to the Writ of Garnishment. The employer was forced to fill out  
9 and serve a second Answer due to the Defendants’ failure to enter a full  
10 satisfaction of Judgment.  
11

12 On October 21, 2008, in response to receiving a second answer, Plaintiff’s  
13 husband Michael Vance contacted Suttell, P.S. and informed them that the  
14 Judgment had been paid in full. (Pl.’s Fact No. 42). On December 8, 2008,  
15 Plaintiff’s husband again called Suttell, P.S., spoke with Defendant Mark T. Case  
16 and told him the garnishment should be released because the Judgment was paid in  
17 full. Defendant Mark Case demanded proof but did nothing else. (Pl.’s Fact No.  
18 43). Later that day, Plaintiff’s husband faxed a copy of the cashier’s check to  
19 Suttell, P.S. with a handwritten remark “Attn Mark Case.” (Pl.’s Fact No. 44).  
20 Defendant Case received the fax and left Plaintiff a voicemail acknowledging that  
21 the check was applied to another debtor’s account. (Pl.’s Fact No. 45). Defendant  
22 Mark Case took no further action. (Pl.’s Fact No. 47).  
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1 On February 6, 2009, Defendant Caitlin R. Finley signed a Motion and  
2 Declaration for Order for Supplemental Proceedings and Proposed Order. (Pl.'s  
3 Fact No. 48). Defendant Finley swore under oath that the "judgment creditor has  
4 an unsatisfied judgment balance against the judgment debtor in an amount  
5 exceeding \$25.00." That statement was false. (Pl.'s Fact No. 49). The Suttell, P.S.  
6 collection notes indicated that Plaintiff contacted Suttell, P.S. and claimed the  
7 Judgment was paid in full. (Pl.'s Fact No. 42-43). Defendant Finley testified that it  
8 was not the procedure to review the file or notes before signing a Declaration for  
9 Supplemental Proceedings because it would be too time consuming. (Pl.'s Fact No.  
10 57-58).

14 On February 19, 2009, the Proposed Order was presented ex parte to a  
15 Spokane County Superior Court Judge Pro Tem, signed and entered based on  
16 Defendant Caitlin Finley's false sworn representation. (Pl.'s Fact No. 60). Plaintiff  
17 was ordered to appear in Court on April 2, 2009. (Pl.'s Fact No. 61).

19 On April 2, 2009, Plaintiff Laura Vance appeared with her husband Michael  
20 Vance at the Spokane County Superior Courthouse. (Pl.'s Fact No. 65). Defendant  
21 Mark Case appeared on behalf of HSBC. (Pl.'s Fact No. 67). The Vances again  
22 told Defendant Mark Case that the HSBC Judgment had been paid in full. (Pl.'s  
23 Fact No. 68). Defendant Mark Case allowed the Vances to leave without  
24 conducting the Supplemental Proceeding because the Order for Supplemental  
25

1 Proceedings was not properly docketed. (Pl.'s Fact No. 69). Defendant Case later  
2 "did not remember Mr. Vance or Laura Vance's name upon return" to his office  
3 and did nothing to properly apply the full payment. (Pl.'s Fact No. 70).  
4

5 On September 23, 2009, Defendant Malisa L. Gurule signed a second  
6 Motion and Declaration for Order for Supplemental Proceedings and Proposed  
7 Order. (Pl.'s Fact No. 73). Defendant Gurule also swore under oath that the  
8 "judgment creditor has an unsatisfied judgment balance against the judgment  
9 debtor in an amount exceeding \$25.00." That statement was false. (Pl.'s Fact No.  
10 74). On October 13, 2009, the second Proposed Order was presented ex parte to a  
11 Spokane County Superior Court Judge Pro Tem, signed and entered based on  
12 Defendant Malisa Gurule's false sworn representation. (Pl.'s Fact No. 77). Plaintiff  
13 Laura Vance was again ordered to appear in Court on November 12, 2009. (Pl.'s  
14 Fact No. 83).  
15  
16  
17

18 On October 20, 2009, "Liz", a loan officer from Quicken Loans, contacted  
19 Suttell, P.S. regarding the HSBC Judgment. The loan officer told an employee of  
20 Suttell, P.S. she had a copy of the cashier's check used to pay the HSBC Judgment  
21 in full. The loan officer requested the Defendants enter a Satisfaction of Judgment  
22 so that the loan could go through. The Defendants did not enter a Satisfaction of  
23 Judgment or investigate the loan officer's claims. Instead, the Defendants  
24 proceeded with the pending Supplemental Proceedings. (Pl.'s Fact No. 72).  
25

1 On November 12, 2009, Plaintiff Laura Vance and her husband Michael  
2 Vance appeared at the Spokane County Superior Court with counsel and requested  
3 a hearing to determine if the elements of RCW 50.12.070 were met. Defendant  
4 Mark Case objected to the hearing. The Court declined to hold a hearing on that  
5 date and continued the matter to November 18, 2009. (Pl.'s Fact No. 85).

6  
7 On November 18, 2009, Plaintiff Laura Vance and her husband Michael  
8 Vance appeared at Spokane County Superior Court for the hearing set at that time.  
9 The state court dismissed the supplemental proceeding and imposed terms against  
10 Defendant Case in the amount of Nine Hundred Ninety Six Dollars and Fifty Three  
11 Cents (\$996.53). (Pl.'s Fact No. 87). The Defendants finally entered a Satisfaction  
12 of Judgment and ceased attempting to collect the debt, paid in full over a year  
13 earlier. (Pl.'s Fact No. 89).

## 14 15 16 17 II. SUMMARY JUDGMENT STANDARD

18 Summary Judgment is proper if “*the pleadings, depositions, answers to*  
19 *interrogatories, and admissions on file, together with the affidavits, if any, show*  
20 *that there is no genuine issue as to any material fact and that the moving party is*  
21 *entitled to a judgment as a matter of law.*” Fed. R. Civ. P. 56(c). The decision to  
22 grant or deny Summary Judgment is predicated on the evidentiary burden as set  
23 forth in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby*,

1 *Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indust. Co. v. Zenith Radio Corp.*,  
 2 475 U.S. 574 (1986).

3  
 4 If the record could not lead a rational trier of fact to find for the nonmoving  
 5 party, there is no “*genuine issue for trial*,” the moving party is entitled to judgment  
 6 as a matter of law. *Celotex*, 477 U.S. at 322-323. The nonmoving party bears the  
 7 burden of establishing that genuine issue of material fact exists. *Id.* The nonmoving  
 8 party “*may not rest upon the mere allegations or denials of [the party’s]*  
 9 *pleadings, but...must set forth specific facts showing that there is genuine issue for*  
 10 *trial.*” Fed. R. Civ. P. 56(e); *See also Matsushita Elec. Indus. Co. v. Zenith Radio*  
 11 *Corp.*, 475 U.S. 574, 586-87 (1986). Notably, a party’s naked allegations and  
 12 speculation are insufficient to create a genuine issue of material fact and withstand  
 13 Summary Judgment. *Roley v. New World Pictures*, 19 F.3d 479, 482 (9th Cir.  
 14 1994). In this case, no genuine issues of material fact exist. Plaintiff Laura Vance  
 15 is entitled to Judgment as a matter of law.

### 19 III. APPLICATION OF THE FDCPA

#### 20 A. Strict Liability

21  
 22 The FDCPA prohibits debt collectors from engaging in various abusive and  
 23 unfair practices. *See Heintz v. Jenkins*, 514 U.S. 291, 292–93, 115 S.Ct. 1489, 131  
 24 L.Ed.2d 395 (1995). “The statute was enacted to eliminate abusive debt collection  
 25 practices; to ensure that debt collectors who abstain from such practices are not

1 competitively disadvantaged; and to promote consistent state action to protect  
 2 consumers. *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, --F.3d--, 2011  
 3 WL 746892, \*5 (9<sup>th</sup>, Cir. 2011), *citing Jerman v. Carlisle, McNellie, Rini, Kramer*  
 4 *& Ulrich LPA*, 130 U.S. 1605, 1608, 130 S.Ct. 1605, 1608–09, 176 L.Ed.2d 519  
 5 (2010). The statute defines a “debt collector” as one who “regularly collects ...  
 6 debts owed or due or asserted to be owed or due another,” 15 U.S.C. § 1692a(6),  
 7 and covers lawyers who regularly collect debts through litigation, *Heintz*, 514 U.S.  
 8 at 293–94, 115 S.Ct. 1489.

11       The FDCPA is a strict liability statute which holds debt collectors  
 12 responsible for any failure to follow its requirements without regard to intent,  
 13 knowledge or the willfulness of the violation. *Clark v. Capital Credit & Collection*  
 14 *Services, Inc.*, 460 F.3d 1162 (9<sup>th</sup> Cir. 2006); *Reichert v. National Credit Systems,*  
 15 *Inc.*, 531 F.3d 1002, 1005 -1006 (9<sup>th</sup> Cir. 2008); *Jeter v Credit Bureau Inc*, 760 F.  
 16 2d 1168 (11<sup>th</sup> Cir. 1985); *See generally* W. Page, Prosser and Keeton on the Law  
 17 Torts §75 (5<sup>th</sup> ed. 1984). "As the FDCPA is a strict liability statute, proof of one  
 18 violation is sufficient to support summary judgment for the plaintiff." *Cacace v.*  
 19 *Lucas*, 775 F. Supp. 502, 505 (D. Conn. 1990). *See also Stojanovski v. Strobl and*  
 20 *Manoogian, P.C.*, 783 F. Supp. 319, 323 (E.D. Mich. 1992); *Riveria v. MAB*  
 21 *Collections, Inc.*, 682 F. Supp. 174, 178–79 (W.D.N.Y. 1988).

1 In *Reichert v. National Credit Systems, Inc.*, 531 F.3d 1002, 1005 -1006  
 2 (C.A.9 (Ariz.), 2008) the court reaffirmed that:

3  
 4 Under the FDCPA, a debt collector cannot collect “any amount  
 5 (including any interest, fee, charge, or expense incidental to the  
 6 principal obligation) unless such amount is expressly authorized by the  
 7 agreement creating the debt or permitted by law.” 15 U.S.C. §  
 1692f(1). The FDCPA makes debt collectors liable for violations that  
 are not knowing or intentional. See *Clark*, 460 F.3d at 1176 & n. 11.

8 A violation of the FDCPA is established if the plaintiff is a “consumer”, the  
 9 alleged obligation is a “debt”, the action (or inaction) complained of was by a  
 10 “debt collector”, and the defendant either did something that is prohibited or failed  
 11 to do something that is required by the FDCPA. 15 U.S.C. 1692a (3); 15 U.S.C.  
 12 1692a(5); 15 U.S.C. 1692a(6).

#### 13 B. Plaintiff is a “Consumer”

14  
 15 The term "consumer" means “any natural person obligated or allegedly  
 16 obligated to pay any debt”. 15 U.S.C. 1692a(3). Defendants admitted that Plaintiff  
 17 Laura Vance is a natural person. (Pl.’s Fact No. 1) (ECF No. 27, *Defendants’*  
 18 *Answer to Amended Complaint*, p.2 ¶ 3.2). The Defendants have alleged she owes  
 19 a debt in the State Court Collection Lawsuit. (Pl.’s Facts No. 2-7) (ECF No. 27,  
 20 *Defendants’ Answer to Amended Complaint*, p.2 ¶ 3.3). Plaintiff Laura Vance is a  
 21 “consumer” as defined by the FDCPA. 15 U.S.C. 1692a(3).  
 22  
 23  
 24  
 25

1 C. The Alleged Obligation was a “debt”

2 The term "debt" means any obligation or alleged obligation of a consumer to  
 3 pay money arising out of a transaction in which the money, property, insurance, or  
 4 services which are the subject of the transaction are primarily for personal, family,  
 5 or household purposes, whether or not such obligation has been reduced to  
 6 judgment. 15 U.S.C. 1692a(5). The alleged debt in this case arises from an HSBC  
 7 credit card used by the Plaintiff for personal, family and household purposes. (Pl.’s  
 8 Fact No. 7). The Defendants were attempting to collect a “debt” as defined by 15  
 9 U.S.C. 1692a(5). The obligation allegedly owed by Plaintiff Vance was a “debt”.  
 10 15 U.S.C. 1692a (5). (Pl.’s Fact No. 7).

14 D. Defendants Suttell & Hammer, P.S., Mark T. Case, Malisa Gurule and  
 15 Caitlin Finley are each a “debt collector.” 15 U.S.C. § 1692a(6).

16 All Defendants admitted being a “debt collector.” (Pl.’s Facts No. 9-12).  
 17 (ECF No. 27, *Defendants’ Answer to Amended Complaint*, Suttell & Hammer,  
 18 P.S., p. 4 ¶ 3.15; Mark T. Case, p. 5 ¶ 3.23; Caitlin Finley, p. 5 ¶ 3.26; Malisa  
 19 Gurule, p. 6 ¶ 3.29).

21 The FDCPA applies to the Defendants actions because they are “debt  
 22 collectors” (15 USC § 1692a (6), who were attempting to collect a “debt” (15 USC  
 23 § 1692a(5)) from a “consumer” (15 USC § 1692a(3)).



1 The three (3) subject matter jurisdictional elements of the FDCPA,  
2 “consumer”, “debt”, and “debt collector” are satisfied.

3  
4 IV. DEFENDANTS VIOLATED § 1691e AND § 1691f OF THE FDCPA BY  
5 PERSISTENTLY ATTEMPTING TO COLLECT A JUDGMENT PAID IN FULL

6 A. False or Misleading Representations – Unfair Practice

7 15 USC § 1692e. False or misleading representations [Section 807 of P.L.]  
8 provides in relevant part:

9 A debt collector may not use any false, deceptive, or misleading  
10 representation or means in connection with the collection of any debt.  
11 Without limiting the general application of the foregoing, the following  
12 conduct is a violation of this section:

- 13 (2) The false representation of--  
14 (A) the character, amount, or legal status of any debt.  
\*\*\*  
15 (5) The threat to take any action that cannot legally be taken or that  
16 is not intended to be taken.

17 The Defendants falsely represented the amount of the debt by claiming  
18 amounts due when the debt was in fact paid in full. The Defendants took action  
19 that could not legally be taken when they garnished Plaintiff Vance and conducted  
20 supplemental proceedings which may only be done if “a judgment exists for a sum  
21 of \$25.00 or over.” RCW 6.32.010. The Judgment was satisfied in full.

22  
23 The *FTC Official Commentary, 53 Fed. Reg. 50105* assists in interpretation  
24 of this section:  
25

SECTION 807--FALSE OR MISLEADING REPRESENTATIONS

1 Section 807 prohibits a debt collector from using any "false, deceptive, or  
2 misleading representation or means in connection with the collection of  
3 any debt." It provides sixteen (16) examples of false or misleading  
4 representations.

5 1. *Scope*. Prohibited actions are not limited to the sixteen subsections  
6 listed as examples of activities that violate this provision. In  
7 addition, section 807(10), which prohibits the "use of any false  
8 representation or deceptive means" by a debt collector, is  
9 particularly broad and encompasses virtually every violation,  
10 including those not covered by the other subsections.

11 Section 807(2) prohibits falsely representing either "(A) the character,  
12 amount, or legal status of any debt; or (B) any services rendered or  
13 compensation which may be lawfully received by" the collector.

14 The FDCPA also prohibits a debt collector from using either "unfair or  
15 unconscionable means to collect ... any debt," 15 U.S.C. § 1692f or "any false,  
16 deceptive, or misleading ... means in connection with the collection of any debt"  
17 *id.* § 1692e.

18 "The FDCPA measures a debt collector's behavior according to an objective  
19 "least sophisticated debtor" standard. *Clark*, 460 F.3d at 1171. This standard  
20 "ensure[s] that the FDCPA protects all consumers, the gullible as well as the  
21 shrewd ... the ignorant, the unthinking, and the credulous.'" *Id.* (quoting *Clomon v.*  
22 *Jackson*, 988 F.2d 1314, 1318–19 (2d Cir.1993) (alteration and ellipsis in  
23 original)). *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994);  
24 *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2d Cir. 1993); *Clomon v.*  
25 *Jackson*, 988 F.2d 1314 (2d Cir. 1993); *Smith v. Transworld Systems, Inc.*, 953

1 F.2d 1025 (6th Cir. 1992); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir.  
2 1991); *Jeter v. Credit Bur., Inc.*, 760 F.2d 1168 (11th Cir. 1985); *see Swanson v.*  
3 *Southern Oregon Credit Service, Inc.*, 869 F.2d 1222 (9th Cir. 1988); *Baker v.*  
4 *G.C. Services Corp.*, 677 F.2d 775, 778 (9th Cir. 1982); *See also Graziano v.*  
5 *Harrison*, 950 F.2d 107, 111 (3d Cir. 1991).

7 The FDCPA imposes strict liability on creditors, including liability “for  
8 violations that are not knowing or intentional.” *Reichert*, 531 F.3d at 1005;  
9 *McCullough*, 637 F.3d 939.

11 On August 26, 2008, Plaintiff Vance paid the Defendants the full amount of  
12 the HSBC Judgment, thus satisfying the Judgment in full. (Pl.’s Fact No. 39).  
13 Black’s law dictionary defines satisfaction as “2. [t]he fulfillment of an obligation;  
14 especially, the payment in full of a debt. *Black’s Law Dictionary*, 1370 (8<sup>th</sup> ed.  
15 2004). Where a partial payment is tendered as full satisfaction of a Judgment, and  
16 the creditor accepts it, an accord and satisfaction is effected. C.J.S. Accord and  
17 Satisfaction § 54; *Burlington Northern Railroad Co. v. Grabber Const. Supply,*  
18 *Inc.*, 55 Wn.App. 772, 778, 780 P.2d 890 (1989), review denied, 114 Wn.2d 1004  
19 (1990); *Revelle v. Hamilton*, 99 Wash. App. 1017 (Wash. Ct. App. 2000).

23 After payment was accepted, the Defendants did not stop the pending  
24 garnishment. Instead, the Defendants continued to misrepresent that the Judgment  
25 had not been paid and continued attempting to collect the full amount, including by

1 seeking orders commanding Plaintiff Vance to appear at supplemental  
2 proceedings.

3  
4 RCW 6.32.010 requires, as statutory prerequisite to supplemental proceedings,  
5 that “a judgment exist for a sum of \$25.00 or over.” RCW 6.32.010. This  
6 prerequisite condition was not met as to Plaintiff Laura Vance because the  
7 Judgment was fully satisfied. Nevertheless, on February 6, 2009, Defendant Finley  
8 falsely swore under penalty of perjury that the HSBC Judgment had an unpaid  
9 balance exceeding \$25.00<sup>7</sup>. (Pl.’s Fact No. 49). On September 23, 2009, Defendant  
10 Malisa Gurule falsely swore to the same. (Pl.’s Fact No. 74). Each false statement  
11 was communicated to Plaintiff Vance and the Court. Based on the false statements,  
12 Plaintiff Vance was required to twice appear for supplemental proceedings. Both  
13 Defendant Gurule and Defendant Finley admit that they would not have signed the  
14 declarations if they had reviewed their collector’s notes but did not do so because it  
15 would be too time consuming. (Pl.’s Fact No. 51-58, 76-80).

16  
17  
18  
19 The FDCPA applies to the “purely legal activities of lawyers” and thus  
20 covers the filing of a declaration in support of supplemental proceedings. *Fox*, 15  
21 F.3d 1507 (9th Cir. 1994) (false and misleading application for writ of garnishment  
22

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23  
24 <sup>7</sup> Perjury conviction upheld where the Defendant “signed [an affidavit] without  
25 thoroughly reading it and did not know it contained the false statement.” *State v.*  
*Jacobson*, 74 Wash.App. 715, 725, 876 P.2d 916, 921 (Wash.App. Div. 1, 1994).

covered by the FDCPA), *See also McCollough*, --F.3d--, 2011 WL 746892, \*5 (9<sup>th</sup>, Cir. 2011) (Request for attorney fee's without admissible evidence of a contract allowing fees violates the FDCPA – requests for admission of false statements of fact violates FDCPA); *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 228, 230-32 (4<sup>th</sup>. Cir. 2007) (FDCPA applies to allegedly erroneous statements made by defendant law firm in interrogatories and summary judgment motion during the course of a state court collection suits). The Defendants misrepresented the amount of the Judgment unsatisfied in violation of 15 USC § 1692e especially § 1692e(2)(A) (false representation of the character, amount, or legal status of any debt”) and § 1692e(5) (threat to take action that cannot legally be taken).

The Defendants' conduct is also an unfair practice in violation of 15 USC 1692f, which states that:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

It is a statutory perquisite to supplemental proceedings that an unsatisfied Judgment of \$25.00 or more exist. RCW 6.32.010. It is a material misrepresentation regarding the status of a Judgment pursuant to 15 USC § 1692e

1 to swear that a Judgment of \$25.00 or more remained unsatisfied when that is not  
2 true. *See* 15 USC § 1692f(1).  
3

4 It is unfair and unconscionable for the Defendants to continue to attempt to  
5 collect the HSBC Judgment for over a year after Plaintiff Vance paid the Judgment  
6 in full. The unfairness is compounded by the multiple occasions the Defendants  
7 ignored the Plaintiff's pleas to stop collection:  
8

- 9 1. On August 26, 2008, the Defendants deposited the Plaintiff's cashier's check  
10 paying the HSBC Judgment in full but without entering a Satisfaction of  
11 Judgment. (Pl.'s Fact No. 39).  
12
- 13 2. On December 8, 2008, Plaintiff's husband Michael Vance spoke with  
14 Defendant Mark Case, told him to release the garnishment because the  
15 Judgment was paid in full and faxed a copy of the cashier's check to prove  
16 payment. Defendant Mark Case received the faxed cashier's check, but did  
17 not quash the garnishment or satisfy the Judgment. (Pl.'s Fact Nos. 43-45).  
18
- 19 3. On December 9, 2008, Defendant Mark Case left Plaintiff's husband a  
20 message acknowledging that Suttell, P.S. deposited the cashier's check  
21 paying the Judgment in full, but did not enter a satisfaction of Judgment.  
22 (Pl.'s Fact No. 46).  
23
- 24 4. On February 6, 2009, Defendant Caitlin Finley signed a Motion and  
25 Declaration for Supplemental Proceedings prepared by someone else. (Pl.'s

Fact No. 48). The Motion and Declaration contained the false statement that the HSBC Judgment remained unsatisfied in an amount greater than \$25.00. (Pl.'s Fact No. 49). Defendant Finley signed the Motion and Order without investigating that fact. (Pl.'s Fact No. 54). The Motion and Order were served on the Plaintiff and filed with the Court. (Pl.'s Fact No. 63).

5. On April 2, 2009, Plaintiff Laura Vance and her husband met with Defendant Case in person at Spokane Superior Court and again told him the Judgment was paid in full in August of 2008. (Pl.'s Fact No. 65). Defendant Case did nothing. (Pl.'s Fact No. 70-71).

6. On September 23, 2009, Defendant Malisa Gurule signed a Motion and Declaration for Supplemental Proceedings prepared by someone else. (Pl.'s Fact No. 73). The Motion and Declaration contained the false statement that the HSBC Judgment remained unsatisfied in an amount greater than \$25.00. (Pl.'s Fact No. 74). Defendant Gurule signed the Motion and Order without investigating that fact. (Pl.'s Fact No. 79). The Motion and Order were served on the Plaintiff and filed with the Court. (Pl.'s Fact No. 84).

The FDCPA is a strict liability statute which holds debt collectors responsible for any failure to follow its requirements without regard to intent, knowledge or the willfulness of the violation. *Clark*, 460 F.3d 1162 (9<sup>th</sup> Cir. 2006).

1 The Defendants took the Plaintiff's money and dismissively ignored the  
2 Plaintiff's multiple pleas to release the garnishment, satisfy the Judgment and leave  
3 her alone. The Defendants' actions were in blatant disregard for the Plaintiff's  
4 rights, and in violation of the FDCPA, 15 USC § 1692e (false, misleading and  
5 deceptive), and 1692f (unfair and unconscionable).  
6

7  
8 V. Conclusion

9 Based on the foregoing, the Plaintiff is entitled to Summary Judgment on  
10 FDCPA liability.

11 DATED this 9<sup>th</sup> day of August, 2011.  
12

13 *Michael D. Kinkley P.S.*

*Michael D. Kinkley P.S.*

14  
15 /s Michael D. Kinkley  
16 Michael D. Kinkley  
WSBA # 11624  
Attorney for Plaintiff

/s Scott M. Kinkley  
Scott M. Kinkley  
WSBA # 42434  
Attorney for Plaintiff



CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of August, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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